United Nations A/73/260

General Assembly

Distr.: General
27 July 2018

Original: English

Seventy-third session
Item 74 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Moratorium on the use of the death penalty

Report of the Secretary-General

Summary

The present report provides information on the implementation of General Assembly resolution 71/187. It discusses developments towards the abolition of the death penalty and the establishment of moratoriums on executions. The report highlights trends in the use of the death penalty, including the application of international standards relating to the protection of the rights of those facing the death penalty, including foreign nationals and migrants. It also discusses gender-based discrimination against women in the application of the death penalty, the disproportionate impact of its use on poor or economically vulnerable individuals, and regional and international initiatives for advancing the abolition of the death penalty.

* A/73/150.

18-12466 (E) 130818

Please recycle

I. Introduction

1. In its resolution 71/187, the General Assembly requested the Secretary-General to report at its seventy-third session on the implementation of the resolution. In submitting the present report, the Secretary-General draws attention to his recent reports to the Human Rights Council on the question of the death penalty (A/HRC/36/26 and A/HRC/39/19) and to the report of the United Nations High Commissioner for Human Rights on the high-level panel discussion on the question of the death penalty (A/HRC/36/27). The present report covers the period from December 2016 to June 2018 and is based largely on the information received following a call for input circulated to States, national human rights institutions, United Nations agencies, international and regional intergovernmental bodies and non-governmental organizations.[1]

II. Availability of information on the use of the death penalty

2. In its resolution 71/187, the General Assembly called upon States to make available relevant information, disaggregated by sex, age and race, as applicable, and other applicable criteria, with regard to their use of the death penalty. The Human Rights Council (Human Rights Council resolution 36/17, para. 9) and human rights mechanisms continued to call upon States to ensure the accessibility of information on the death penalty (CRC/C/PAK/CO/5, para. 25, and CAT/C/SAU/CO/2, para. 43), as well as to provide prompt notification to relatives about the date and place of any execution (CAT/C/BLR/CO/5, para. 55).

3. Up-to-date and accurate global figures on the application of the death penalty are difficult to obtain. Some Governments are reluctant to release information on the number and details of individuals executed. Reportedly, Belarus, China and Viet Nam continue to classify data on the use of the death penalty as a State secret. While the Supreme People's Court of Viet Nam began publishing judgments and decisions on its online portal, restrictions on the availability of data remain under the laws on national security and State secrets and other laws protecting the identity of the defendants or entities[2]. Little or no information was reportedly available on China, the Democratic People's Republic of Korea, Lao People's Democratic Republic, Libya, Malaysia, Saudi Arabia, the Sudan, the Syrian Arab Republic and Yemen.[3]

4. In countries affected by conflict, the challenge of transparency is compounded, and information related to the use of the death penalty is very difficult to obtain, including with regard to Iraq, Libya, the Syrian Arab Republic and Yemen.[4]

---

[1] Submissions are on file with the Secretariat and available for consultation.

[2] Supreme People's Court, resolution on the announcement of the judgment and decision on the Court's electronic portal, resolution No. 03/2017/NQ-HDTP, 16 March 2017.

[3] Submissions from Amnesty International, Harm Reduction International.

[4] Submissions from Amnesty International; Office of the United Nations High Commissioner for Human Rights (OHCHR), "United Nations human rights chief 'appalled' at Iraq mass execution", 27 September 2017. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22166&LangID=E.

III. Developments since the adoption of General Assembly resolution 71/187

A. Abolition of the death penalty and ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights

5. During the reporting period, several States took initiatives towards abolition of the death penalty: 170 were execution-free in 2017. Criminal codes that do not provide for the death penalty were adopted or came into force in Benin, Burkina Faso and Mongolia. In the Central African Republic and Guinea, military justice codes that do not provide for the death penalty were adopted or came into force. The National Assembly of Chad promulgated a Penal Code that abolishes the death penalty for ordinary crimes, while maintaining it for "terrorism". In October 2017, the Constitutional Court of Guatemala effectively abolished the death penalty for ordinary crimes. Madagascar and Sao Tome and Principe ratified, and the Gambia and the State of Palestine signed, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,[5] bringing the total number of States parties to 85 and the number of signatories to 39.

B. Moratoriums

6. The General Assembly, in its resolution 71/187, welcomed the decisions made by an increasing number of States from all regions, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty. The Assembly further called upon all States to establish a moratorium on executions with a view to abolishing the death penalty. In his previous report, the Secretary-General reported that in many States, moratoriums on the imposition of the death penalty have been a first step towards abolition and have had a beneficial effect on abolition efforts (A/71/332, paras. 8 and 9). This trend continued during the reporting period.

7. In February 2018, the President of the Gambia announced the suspension of the death penalty as a first step towards abolition[6]. In October 2017, the President of the United Republic of Tanzania declared that he will not sign any death warrants; and granted pardon to 61 prisoners sentenced to death.[7] The National Court of Papua New Guinea conducted a judicial inquiry into the protection of the human rights of those facing the death penalty and ordered an indefinite stay of execution for those on death row, including to allow for the establishment of a mercy committee and review of clemency applications.[8] Nigeria reported that the last executions were carried out in 2013, even though the Federal Government is yet to adopt a formal policy of moratorium in line with resolution 71/187.[9] United Nations human rights mechanisms called on States to impose a moratorium on executions, notably in Afghanistan,

[5] Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en; S/2018/614, para. 52.

[6] President of the Gambia, statement at the fifty-third independence anniversary celebration. Available at https://statehouse.gov.gm/statement-53rd-independence-anniversary-celebration.

[7] Legal and Human Rights Centre and Zanzibar Legal Services Centre, *'Unknown Assailants': A Threat to Human Rights — Tanzania Human Rights Report 2017* (Dar es Salaam and Zanzibar, 2018). Available at http://www.humanrights.or.tz/assets/images/upload/files/LHRC%20THRR%202017(2).pdf.

[8] Papua New Guinea, *Enforcement of Basic Rights under Section 57 of the Constitution* (2017). Available at http://www.paclii.org/pg/cases/PGNC/2017/266.html.

[9] Submission from Nigeria.

Bahrain, Bangladesh, Morocco and Pakistan,[10] and consider abolishing the death penalty in Bangladesh, Pakistan, the Republic of Korea and Thailand.[11]

C. Reduction of the number of offences punishable by death

8. In its resolution 71/187, the General Assembly also called upon States to reduce the number of offences for which the death penalty may be imposed. The report of the Secretary-General to the Human Rights Council on the question of the death penalty (A/HRC/39/19) provides further information on the reduction of the number of offences punishable by death and the removal of the mandatory death penalty.

9. In Afghanistan, the new Penal Code "significantly reduces the number of crimes for which the death penalty applies".[12] As detailed in section V.A, the Islamic Republic of Iran and Malaysia took steps to remove the mandatory death penalty for drug-related offences in some circumstances. In Myanmar, a law repealed provisions that allowed the death penalty for treason, abetting treason and sabotage.[13] Thailand abolished the mandatory death penalty for selling drugs.[14] And several crimes were removed from the list of capital offences in Viet Nam (CCPR/C/VNM/3, para. 67).

D. National initiatives to advance abolition

10. In its resolution 71/187, the General Assembly welcomed initiatives and political leadership encouraging national discussions and debates on the possibility of moving away from capital punishment through domestic decision-making. During the reporting period, a number of initiatives — including by abolitionist States — were taken to advance abolition.[15]

11. Australia accepted recommendations by a parliamentary joint standing committee to develop a whole-of-government strategy for abolition of the death penalty in the context of foreign policy engagements[16]. Italy reported on awareness-raising activities, for example, contributing to the high-level event on the death penalty held by the Office of the United Nations High Commissioner for Human Rights (OHCHR) during the seventy-first session of the General Assembly. Italy also highlighted its task force, set up together with Amnesty International Italy, Nessuno tocchi Caino (Hands Off Cain) and the Community of Sant'Egidio, which seeks to strengthen cooperation in the activities carried out in the run-up to the General

[10] See CAT/C/AFG/CO/2; CAT/C/BHR/CO/2-3; CCPR/C/BGD/CO/1; CCPR/C/MAR/CO/6; CCPR/C/PAK/CO/1.

[11] See CCPR/C/BGD/CO/1; CCPR/C/PAK/CO/1; CAT/C/KOR/CO/3-5; CCPR/C/THA/CO/2.

[12] United Nations Assistance Mission in Afghanistan (UNAMA), "UNAMA welcomes Afghanistan's new penal code: calls for robust framework to protect women against violence", 22 February 2018. Available at https://unama.unmissions.org/unama-welcomes-afghanistan%E2%80%99s-new-penal-code-calls-robust-framework-protect-women-against-violence

[13] International Federation for Human Rights (FIDH), *Going Backwards: The Death Penalty in Southeast Asia* (Paris, 2016). Available at https://www.fidh.org/IMG/pdf/asie682apdmweb.pdf.

[14] Narcotic Act (Vol. 6) 2016.

[15] See A/HRC/39/19 for legislative amendments. International Commission against the Death Penalty, *How States Abolish the Death Penalty: 29 Case-Studies*, 2nd ed. (Madrid, 2018). Available at http://www.icomdp.org/2018/06/launch-of-icdp-publication-how-states-abolish-the-death-penalty-29-case-studies/; International Federation for Human Rights (FIDH), *Triggers for abolition of the death penalty in Africa: A Southern African perspective* (Paris, 2017). Available at https://www.fidh.org/IMG/pdf/death_penalty_in_africa_703a_eng_25_oct_2017_web_ok_ok.pdf. These publications describe the experiences of States moving towards abolition.

[16] Australia, "A world without the death penalty: Australia's advocacy for the abolition of the death penalty", March 2017. Available at http://dfat.gov.au/about-us/publications/Documents/aus-gov-response-jscfadt-report-a-world-without-the-death-penalty.pdf.

Assembly resolution. Slovenia reported on its public statements on the death penalty, and that it had raised the issue in the Human Rights Council, including in the context of the universal periodic review. Sweden reported that its Parliament had decided to support the Government's approach to human rights, democracy and the principles of the rule of law in Swedish foreign policy, which includes its intention to work to abolish the death penalty across the world.

12. The Human Rights Committee encouraged Burkina Faso and Morocco to continue national debates and efforts towards the abolition of the death penalty.[17] In Belarus, the President declared that he would be willing to impose a moratorium on the death penalty if supported by the majority of citizens. Subsequent conferences and round tables were held in Belarus on the death penalty, including by the Council of Europe.[18] During its universal periodic review, Ghana referred to its commitment to abolish the death penalty (A/HRC/37/7, para. 11). Indonesia accepted recommendations during its universal periodic review to consider establishing a moratorium on executions with a view to abolishing the death penalty (A/HRC/36/7). In Kenya, the Power of Mercy Advisory Committee began a national public debate to collect views of members of the public on the subject of the death penalty;[19] while the Supreme Court relied on international and national jurisprudence to hold that the mandatory death penalty for murder is unconstitutional.[20] Zimbabwe reported during its universal periodic review that a paper on the abolition of the death penalty would be prepared for debate (A/HRC/34/8, para. 129).

13. In the Republic of Korea, advocacy for the abolition of the death penalty continued.[21] In December 2017, the President of the Republic of Korea suggested to the National Human Rights Commission of Korea that it would be helpful to present detailed alternative measures, along with international human rights principles, in its proposals on the abolition of the death penalty.[22] In Sierra Leone, while one of the options recommended by the Constitutional Review Committee was that the Constitution be amended to abolish the death penalty,[23] a subsequent government white paper rejected the recommendations.[24] In Sri Lanka, the Subcommittee on Fundamental Rights of the Constitutional Assembly recommended the inclusion in the proposed Bill of Rights of a provision that no person shall be "punished with death".[25]

---

[17] CCPR/C/BFA/CO/1, para. 22; CCPR/C/MAR/CO/6, para. 20; A/HRC/36/6/Add.1.

[18] Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, *The Death Penalty in the OSCE Area*, background paper (Warsaw, 2017). Available at https://www.osce.org/odihr/343116?download=true; Council of Europe, "Abolition of death penalty discussed in Minsk", 18 April 2018. Available at https://www.coe.int/en/web/human-rights-rule-of-law/-/abolition-of-death-penalty-discussed-in-minsk.

[19] Power of Mercy Advisory Committee, "Final leg of the public debate on capital punishment kicks off tomorrow Wednesday in Kirinyaga County", 22 September 2016. Available at http://www.powerofmercy.go.ke/final-leg-of-the-public-debate-on-capital-punishment-kicks-off-tomorrow-wednesday-in-kirinyaga-county/.

[20] *Francis Karioko Muruatetu and another v. Republic and five others* (2017).

[21] Submission from the National Human Rights Commission.

[22] Lee Sung-Ho of National Human Rights Commission of Korea, "International seminar on the death penalty", 26 April 2018.

[23] Constitutional Review Committee, "Report of the Constitutional Review Committee", 2016. Available at https://constitutionalreviewblog.files.wordpress.com/2017/01/crc_final_report16.pdf.

[24] Amnesty International, "Sierra Leone: government rejection of important constitutional review recommendations a missed opportunity to strengthen human rights protection", press release, 6 December 2017. Available at https://www.amnesty.org/en/press-releases/2017/12/sierra-leone-government-rejection-missed-opportunity-to-strengthen-human-rights-protection/.

[25] Steering Committee of the Constitutional Assembly, "Report of the Sub-Committee on Fundamental Rights". Available at https://english.constitutionalassembly.lk/images/pdf/01-Fundamental-Rights-ste.pdf.

14. As highlighted in previous reports, it is important for the effectiveness and transparency of any debate on the death penalty to ensure that the public has access to balanced information, including accurate information and statistics on criminality and the various effective ways to combat it, without resorting to capital punishment (A/HRC/24/18, para. 80, and A/HRC/27/23, para. 73). During the reporting period, a number of public opinion surveys and studies were conducted on various aspects of the use of the death penalty, notably relating to Japan,[26] Malawi,[27] Singapore[28] and Zimbabwe.[29] Awareness-raising events and activities on the death penalty were undertaken, including in Burkina Faso, Cameroon,[30] the Democratic Republic of the Congo,[31] Egypt[32], Malaysia,[33] Niger[34] and Sri Lanka.[35]

IV. Trends in the use of the death penalty

A. Number of executions and executing countries

15. The number of executions reportedly decreased during the reporting period,[36] while the number of States in which executions were carried out in 2017 remained the same as in 2016, at 23 States.[37] Botswana and Thailand resumed executions in 2018 (see sect. IV.B). Reports indicate a decrease in the number of death sentences imposed, as well as in the number of countries that imposed death sentences, as compared with 2015.[38] A number of States reported that they retain the death penalty (Malaysia and Singapore) and referred to the "sovereign right of all countries to

[26] David Johnson, *Does the Death Penalty Deter Homicide in Japan?* (Asian Law Centre, 2017). Available from https://law.unimelb.edu.au/__data/assets/pdf_file/0007/2676418/Johnson-EN_final.pdf.

[27] Cornell Center on the Death Penalty Worldwide, "Malawian traditional leaders' perspectives on capital punishment: a targeted survey of traditional leaders affected by the Malawi Capital Resentencing Project" (Cornell Law School and Paralegal Advisory Service Institute, 2017). Available at https://reprieve.org.uk/wp-content/uploads/2018/04/Malawian-Traditional-Leaders-Perspectives-on-Capital-Punishment.pdf.

[28] The Death Penalty Project, "Singapore public opinion survey reveals low support for the mandatory death penalty", 5 March 2018. Available at https://www.deathpenaltyproject.org/2018/03/05/singapore-public-opinion-survey-reveals-low-support-for-the-mandatory-death-penalty/.

[29] Mai Sato, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition? — A Survey of Public Attitudes Towards the Death Penalty* (London, The Death Penalty Project, 2018). Available at http://www.deathpenaltyproject.org/wp-content/uploads/2018/05/12-Years-Report.pdf.

[30] Submission from Ensemble contre la peine de mort.

[31] Submission from Ensemble contre la peine de mort.

[32] Submission from the National Council for Human Rights.

[33] Anti-Death Penalty Asia Network Malaysian National Conference held at Kuala Lumpur on 21 and 22 July 2017. See https://adpan.org/category/resources-for-abolitionist/adpans-malaysian-national-conference-2017/.

[34] Submission from the International Federation of Action by Christians for the Abolition of Torture.

[35] Submission from the Human Rights Commission.

[36] Amnesty International reported 993 executions in 2017, down by 4 per cent from 2016 (1,032 executions). These figures do not include China. See Amnesty International, "Amnesty International global report: death sentences and executions 2017" (London, 2018). Available at https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF.

[37] Afghanistan, Bahrain, Bangladesh, Belarus, China, Democratic People's Republic of Korea, Egypt, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kuwait, Malaysia, Pakistan, Saudi Arabia, Singapore, Somalia, South Sudan, United Arab Emirates, United States of America, Viet Nam, Yemen and State of Palestine.

[38] Amnesty International reported 2,591 sentences in 2017, down from 3,117 in 2016; and the number of countries that imposed death sentences fell from 55 in 2015 to 53 in 2017. See Amnesty International, "Amnesty International global report".

develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations" (General Assembly resolution 71/187).

16. The High Commissioner for Human Rights noted in March 2017 that over 80 per cent of Member States have ceased putting people to death, either formally or with informal moratoriums. However, he highlighted that China, the Islamic Republic of Iran, Pakistan and Saudi Arabia were responsible for almost 90 per cent of the executions carried out during the reporting period. He deeply regretted that Bahrain, Indonesia, Jordan and Kuwait had retreated from formal or informal commitments to moratoriums on the death penalty, while Maldives, Papua New Guinea, the Philippines and Turkey had stated their intention to reinstate capital punishment.[39]

17. During the reporting period, the Secretary-General, the High Commissioner for Human Rights and the United Nations special procedures mandate holders reiterated their alarm at the high rate of executions in numerous countries.[40] In the Islamic Republic of Iran, 482 executions were recorded in 2017, compared with 530 in 2016 and 969 in 2015 (A/HRC/37/24). Furthermore, at least 77 people, among them three juvenile offenders, were reportedly executed between 1 January and 20 May 2018.[41]

18. In Bahrain, the number of people on death row reportedly more than doubled following executions in January 2017 (15 sentenced to death in 2017),[42] and in 2018, courts reportedly sentenced a further three persons to death.[43] Executions in Iraq reportedly increased by 42 per cent, from 88 to over 125 in 2017,[44] and at least 65 death sentences were imposed for offences that included mostly terrorism-related acts, in addition to others related to murder, kidnapping and drug offences. In March 2018, the High Commissioner for Human Rights expressed particular concern at the lack of due process and fair trial standards in the hearings conducted under the Anti-

[39] OHCHR, "High Commissioner for Human Rights on the activities of his Office and recent human rights developments", 8 March 2017. Available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21316&LangID=E.

[40] See A/72/562 and A/HRC/37/24, and OHCHR, "Zeid urges Iran to stop violating international law by executing juvenile offenders", 16 February 2018; "United Nations experts urge Iran to halt 'unlawful execution' of young offender", 19 June 2018; "Iran must halt execution of Ramin Hossein Panahi, say United Nations rights experts", 18 June 2018; "United Nations rights expert urges Iran to halt imminent execution of Ramin Hossein Panahi", 2 May 2018; "United Nations rights experts call on Iran to annul death sentence against Ramin Hossein Panahi", 19 April 2018; "United Nations rights experts urge Iran to annul death sentence against Ahmadreza Djalali", 9 February 2018; "United Nations rights experts call on Iran to halt execution of second juvenile offender in as many weeks", 16 January 2018; "Iran: United Nations rights experts make urgent plea to halt imminent execution of juvenile Amirhossein Pourjafar", 3 January 2018. Available at, respectively, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22664&LangID=E, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23216&LangID=E, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23208&LangID=E, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23025&LangID=E, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22959&LangID=E, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22645&LangID=E, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22587&LangID=E and http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22572&LangID=E.

[41] Iran Human Rights, "Iran execution trends six months after the new anti-narcotics law", 29 May 2018. Available at https://iranhr.net/en/articles/3325/.

[42] Amnesty International, "Amnesty International global report".

[43] Submission from Americans for Democracy and Human Rights in Bahrain.

[44] Amnesty International, "Amnesty International global report".

Terrorism Law 13 of 2005.[45] An increase in the number of executions was also reported in Singapore and Somalia, as well as in the State of Palestine (Gaza).[46]

19. In 2017, executions in Egypt fell by 20 per cent,[47] and a 31 per cent decrease in execution figures, compared with 2016, was reported in Pakistan. In Saudi Arabia, at least 145 people were reportedly executed in 2017, representing a 5 per cent decrease compared with 2016.[48]

B. Resumption of executions

20. The resumption of executions runs counter to the international trend towards the reduction and eventual abolition of the death penalty.

21. During the reporting period, Bahrain, Botswana, Jordan, Kuwait, Thailand and the United Arab Emirates resumed executions.[49] In particular, in June 2018, Thailand carried out its first execution since 2009[50] and, in January 2017, seven people were hanged in Kuwait, the first executions since March 2013. Botswana carried out two executions in 2018, at least one of which was reportedly in total secrecy and with no prior information given to the person's family, relatives or lawyers, who were unable to meet with him.[51]

V. Protection of the rights of those facing the death penalty

22. In its resolution 71/187, the General Assembly called upon States to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50. The Human Rights Committee continued its consideration of a draft general comment on article 6 of the International Covenant on Civil and Political Rights, addressing notably the meaning of the "most serious crimes"; the prohibition on mandatory death sentences; methods of execution; deportation and extradition; fair trial guarantees; the right to consular notification; and protection of juveniles, persons with disabilities and pregnant women.[52]

23. Cuba, Egypt, Iraq, Jordan, Kenya, Malaysia, Morocco and Pakistan provided information regarding the legal guarantees and safeguards in capital cases within their respective jurisdictions. Trends regarding the protection of the rights of those facing

[45] Zeid Ra'ad Al Hussein, OHCHR, "High Commissioner's global update of human rights concerns", annual report and oral update by the High Commissioner for Human Rights on the activities of his Office and recent human rights developments, 7 March 2018. Available at http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22772&LangID=E.

[46] Amnesty International, "Amnesty International global report".

[47] Ibid.

[48] Ibid.

[49] Ibid.

[50] OHCHR, "United Nations Human Rights Office expresses dismay at the resumption of death penalty in Thailand", press release, 19 June 2018. Available at http://bangkok.ohchr.org/news/press/Thaiexecution.aspx.

[51] African Commission on Human and Peoples' Rights, "Press Release on the Execution of Joseph Poni Tselayarona", press release, 21 February 2018. Available at http://www.achpr.org/press/2018/02/d388/; International Federation for Human Rights (FIDH), "Botswana continues with cruel and regressive execution", press release, 19 February 2018. Available at https://www.fidh.org/en/issues/death-penalty/botswana-continues-with-cruel-and-regressive-execution.

[52] OHCHR, Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights — Right to life. Available at https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx.

the death penalty can be gleaned from recent annual reports of the Secretary-General to the Human Rights Council on the question of the death penalty (A/HRC/36/26 and A/HRC/39/19). Some key trends are also outlined below.

A. Imposition of the death penalty for drug-related offences

24. In accordance with article 6 (2) of the International Covenant on Civil and Political Rights, States that have not abolished the death penalty may impose it only for the "most serious crimes", which has been consistently interpreted as meaning intentional killing.[53] With regard to drug-related offences, United Nations human rights mechanisms have consistently stated that drug-related offences do not meet the threshold of the "most serious crimes".[54] The International Narcotics Control Board encouraged all States that retain the death penalty for drug-related offences to commute death sentences that have already been handed down and to consider the abolition of the death penalty for drug-related offences, in view of the relevant international conventions and protocols, and resolutions of the General Assembly, the Economic and Social Council and other United Nations bodies on the application of the death penalty.[55]

25. Some positive developments were noted during the reporting period, notably in the Islamic Republic of Iran and Malaysia, which restricted the application of the mandatory death penalty for some drug-related offences in some circumstances. The Secretary-General welcomed the amendment to the law on drug trafficking in the Islamic Republic of Iran and considered it in line with the human rights commitments adopted by Member States through the outcome document of the thirtieth special session of the General Assembly on the world drug problem (see A/HRC/37/24, para. 12). In 2018, Myanmar indicated that it would "consider repealing the death sentence for drug-related offences".[56]

26. Nevertheless, at least 30 States maintain the death penalty for drug-related offences in their legislation, and at least nine countries do so as a mandatory sanction.[57] While there was reportedly a decline in executions for drug-related offences worldwide,[58] during the reporting period, the death penalty was imposed or implemented for drug-related offences in countries including China, Indonesia, the Islamic Republic of Iran, Kuwait, the Lao People's Democratic Republic, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, the United Arab Emirates and Viet Nam. At least 325 people were executed for drug-related offences in 2016, and at least

[53] CCPR/C/LBN/CO/3, para. 22; see also CCPR/C/PAK/CO/1, para. 18; A/67/275, paras. 35 and 66; CCPR/C/79/Add.25, para. 8; CCPR/C/48/D/470/1991.

[54] CCPR/C/PAK/CO/1, para. 17; CCPR/C/THA/CO/2, para. 17; CCPR/C/KWT/CO/3, para. 22; A/71/372, para. 48.

[55] International Narcotics Control Board, "INCB reiterates its call to States to consider the abolition of the death penalty for drug-related offences", press release, 1 August 2016. Available at http://www.incb.org/incb/en/news/press-releases/2016/press_release010816.html; Viroj Sumyai, President, International Narcotics Control Board, "Item 5 (c) Implementation of the international drug control treaties: International Narcotics Control Board", statement at the sixty-first session of the Commission on Narcotic Drugs, 14 March 2018. Available at http://www.incb.org/documents/Speeches/Speeches2018/Speech_61st_CND_Item_5c_speech_09_03_2018_text_for_Web_Posting_check_against_delivery.pdf.

[56] Central Committee for Drug Abuse Control, "National drug control policy", 2018. Available at https://www.unodc.org/documents/southeastasiaandpacific//2018/02/Myanmar_Drug_Control_Policy.pdf.

[57] Gen Sander, *The Death Penalty for Drug Offences: Global Overview 2017* (London, Harm Reduction International, 2018). Available at https://www.hri.global/files/2018/03/06/HRI-Death-Penalty-Report-2018.pdf.

[58] Submission from Harm Reduction International.

280 in 2017.[59] India and the State of Palestine (Gaza) reportedly resumed the imposition of the death penalty for drug-related offences.[60] In March 2018, the Attorney General of the United States provided guidance to United States attorneys regarding the use of capital punishment in drug-related prosecutions, including the pursuit of capital punishment in appropriate cases".[61]

27. In 2017, the High Commissioner for Human Rights stated that the most effective manner of addressing drug-related crimes is through strengthening the rule of law, ensuring an effective justice system and reducing drug use by adopting a strong public health approach to prevention, harm reduction and other forms of health care and treatment, in accordance with international standards. In that regard, he urged the Philippines not to reintroduce the death penalty.[62] OHCHR also expressed concern over executions for drug-related offences in Singapore.[63]

B. Imposition of the death penalty by military courts

28. In many States, the death penalty was imposed following proceedings that failed to meet international fair trial standards, and during the reporting period, the High Commissioner and the special procedures mandate holders expressed concern over the lack of fair trial in death penalty cases, including in Egypt,[64] the Islamic Republic of Iran,[65] Iraq,[66] the Sudan[67] and Saudi Arabia.[68]

29. As stated by the Human Rights Committee, the trial of civilians by military courts should be exceptional. They may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all the measures necessary to ensure that such trials take place under conditions that genuinely afford the full guarantees stipulated in article 14 of the

[59] Ibid.

[60] Sander, *The Death Penalty for Drug Offences*, submission by Harm Reduction International, referring to Peter John, Poornima Rajeshwar and Rahul Raman, *Death Penalty in India: Annual Statistics Report* (New Delhi, Centre on the Death Penalty, National Law University, 2018). Available at https://issuu.com/p39a/docs/deathpenaltyreport_annualstats2017_.

[61] Office of the Attorney General, "Guidance regarding use of capital punishment in drug-related prosecutions", memorandum to United States attorneys, 20 March 2018. Available at https://www.justice.gov/file/1045036/download.

[62] See https://www.ohchr.org/Documents/Countries/PH/OpenLetterHC_DeathPenalty.pdf; and Human Rights Committee, general comment No. 26 (1997) on the continuity of obligations.

[63] OHCHR, "United Nations Human Rights Office condemns execution for drug-related offences in Singapore", press release, 16 March 2018; and "United Nations Human Rights Office calls on Singapore to halt execution for drugs charges". Available at, respectively, http://bangkok.ohchr.org/news/press/Singapurax.aspx and http://bangkok.ohchr.org/news/press/Singapore%20to%20halt"%20execution.aspx.

[64] OHCHR, "Egypt must halt executions, say United Nations human rights experts", 26 January 2018. Available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22613.

[65] OHCHR, "Iran must halt execution of Ramin Hossein Panahi, say United Nations rights experts", 18 June 2018; "United Nations rights experts call on Iran to annul death sentence against academic and free him", 20 December 2017. Available at, respectively, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23208&LangID=E and http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22556&LangID=E.

[66] OHCHR, "End of visit statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her visit to Iraq", 24 November 2017. Available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22452&LangID=E.

[67] Ravina Shamdasani, Spokesperson for the United Nations High Commissioner for Human Rights, press briefing notes on Guatemala and the Sudan, 18 May 2018. Available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23101&LangID=E.

[68] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23639).

International Covenant on Civil and Political Rights.[69] According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the imposition of the death penalty, especially on civilians, by military courts and tribunals represents a worrying trend. Experience has shown that military or other special jurisdictions are often ill-suited to ensuring full compliance with fair trial standards, respect for which is of particularly crucial importance in capital cases (A/67/275, para. 33, and E/CN.4/1996/40, para. 107). The Special Rapporteur on the independence of judges and lawyers called on States to adopt specific norms that expressly exclude civilians from investigation and prosecution by military tribunals (A/HRC/35/31, para. 101, and A/68/285, para. 89).

30. In Pakistan, the Parliament extended the original two-year tenure of military courts to try civilians suspected of terrorism-related offences.[70] The Human Rights Committee recommended that Pakistan should, as a matter of priority, take all measures necessary to ensure that the death penalty is not imposed by military courts, in particular against civilians (CCPR/C/PAK/CO/1, paras. 18 and 24). In April 2018, United Nations special procedures mandate holders called for the retrial of four men sentenced to death by a Bahraini military court and welcomed the fact that the King of Bahrain had commuted the death sentence to life in prison.[71]

31. The Human Rights Committee noted with regret that a significant number of people have been sentenced to death in Cameroon, including by military courts, in the context of counter-terrorism, and recommended that Cameroon ensure that all persons be given a fair trial (CCPR/C/CMR/CP/5, para. 24). OHCHR expressed its deepest concern at death sentences issued by a "field military court" in the State of Palestine (Gaza), noting that the conviction and sentence are final, allowing no possibility of appeal or plea of clemency, in violation of international law.[72]

C. Prohibition of extradition, expulsion or deportation to countries where there is a risk of the person being subjected to the death penalty

32. The Committee against Torture adopted general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, which includes non-exhaustive examples of human right situations that may constitute an indication of a risk of torture to which States should give consideration in their decisions on removal of a person from their territory and when applying the principle of non-refoulement. States parties should consider, inter alia, whether the person concerned would be deported to a State: where the death penalty is in force and considered as a form of torture or cruel, inhuman or degrading treatment or punishment by the deporting State party, in particular if the deporting State party has abolished the death penalty or established a moratorium on its use; where the death penalty would be imposed for crimes that are not considered by the deporting State to be the most serious crimes; or where the death penalty is carried out for crimes committed by person under the age of 18 years or on pregnant women or nursing mothers or persons who have a severe psychosocial

[69] Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 22.

[70] Constitution (Twenty-eighth Amendment) Act, 2017; Pakistan Army (Amendment) Act, 2017.

[71] OHCHR, "Bahrain: United Nations rights experts condemn military court convictions, cite torture allegations", 30 April 2018. Available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23010&LangID=E.

[72] OHCHR, "Gaza death sentences illegal", 23 May 2017. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21653&LangID=E.

or intellectual disability[73]. The Committee also recalled that non-compliance with interim measures of protection regarding deportations constitutes a breach of article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[74] and that diplomatic assurances should not be used to undermine the principle of non-refoulement.[75]

33. The Office of the United Nations High Commissioner for Refugees (UNHCR) reported on the international protection needs of asylum seekers at risk of facing the death penalty, for example, with regard to people fleeing the Syrian Arab Republic[76] and for persons upon whom the death penalty could be imposed on the basis of legislation criminalizing the exercise of fundamental freedoms, such as freedom of expression.[77] In 2016, UNHCR advised against returns to Iraq given that, in areas in Iraq under the de facto control of Islamic State in Iraq and the Levant (ISIL), the group implements their strict interpretation of sharia, which includes crimes that are punishable by death.[78]

34. In their submissions, some States reported that extradition will not be granted for an offence that is punishable by death under the law of the requesting country, unless assurances are given that are considered sufficient that the death penalty will not be carried out (Azerbaijan, Ireland and Russian Federation) or will be commuted (Colombia). The Australian judiciary considered cases where persons alleged a real risk of significant harm if they were returned to a country where they could face the death penalty; and in its analysis considered the voting patterns of the particular State at the General Assembly, as well as public statements made by the Head of State.[79] In May 2018, the European Court of Human Rights found a violation of article 6 (1) of the European Convention on Human Rights because Romania had assisted in the applicant's transfer from its territory "in spite of a real risk that he could face a flagrant denial of justice" and "be subjected to the death penalty".[80] According to the Court, the European Convention requires the Government to remove that risk by seeking assurances from the receiving authorities that the individual will not be subjected to the death penalty.

[73] Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 29.

[74] Ibid., para. 37.

[75] Ibid., para. 20; CAT/C/ARG/CO/5-6, para. 33.

[76] Office of the United Nations High Commissioner for Refugees (UNHCR), "International protection considerations with regard to people fleeing the Syrian Arab Republic: update V" (2017). Available at http://www.refworld.org/docid/59f365034.html.

[77] UNHCR, "News comment by UNHCR's spokesperson, Cecile Pouilly, on the return of Mr James Gatdet Dak to South Sudan", 4 November 2016. Available at http://www.unhcr.org/news/press/2016/11/581ca3924/news-comment-unhcrs-spokesperson-cecile-pouilly-return-mr-james-gatdet.html.

[78] UNHCR, "UNHCR position on returns to Iraq", 2016. Available at http://www.refworld.org/docid/58299c694.html, para. 17.

[79] *BTW17 v. Minister for Immigration and Border Protection (2018); AHQ17 v. Minister for Immigration and Border Protection* (2017) (submission from Monash University Castan Centre for Human Rights Law).

[80] *Al Nashiri v. Romania*, application No. 33234/12, 31 May 2018.

VI. Prohibition of the use of the death penalty against children, persons with mental or intellectual disabilities, and disproportionate impact on foreign nationals, including migrant workers

A. Children

35. In its resolution 71/187, the General Assembly called upon all States to progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age. In some States, legislation allows for the application of the death penalty to individuals accused of committing a crime while under the age of 18 years, in violation of article 6 of the International Covenant on Civil and Political Rights and article 37 of the Convention on the Rights of the Child.[51] During the reporting period, juvenile offenders reportedly remained on death row in Bangladesh,[52] the Islamic Republic of Iran,[53] Iraq,[54] Maldives,[55] Pakistan (CCPR/C/PAK/CO/1, para. 17) and Saudi Arabia (CRC/C/SAU/CO/3-4, para. 20).[56] Only a very small number of States are believed to have executed juveniles during the reporting period.[57]

B. Persons with mental or intellectual disabilities

36. In its resolution 71/187, the General Assembly called upon all States to progressively restrict the use of the death penalty and not to impose capital punishment for offenses on persons with mental or intellectual disabilities. The Human Rights Committee and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have underlined that the death penalty should not be imposed on persons with psychosocial or intellectual disabilities,[58] and this prohibition is firmly rooted in the customs and practices of most legal systems (A/HRC/36/26, para. 50).

---

[51] Child Rights International Network, "The death penalty - inhuman sentencing of children". Available at http://www.crin.org/en/home/campaigns/inhuman-sentencing/problem/death-penalty

[52] Amnesty International, "Executions of juveniles since 1990 as of March 2018" (2018). Available at https://www.amnesty.org/download/Documents/ACT5038322016ENGLISH.PDF.

[53] A/HRC/37/68, para. 19; Amnesty International, "Imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons with mental or intellectual disabilities", 27 April 2018. Available at https://www.amnesty.org/download/Documents/ACT5083102018ENGLISH.PDF.

[54] OHCHR, "End of visit statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her visit to Iraq", 24 November 2017. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22452&LangID=E.

[55] OHCHR, "United Nations expert urges Maldives to step back from 'imminent' death penalty return", 3 August 2017. Available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21936&LangID=E.

[56] Amnesty International, "Imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons with mental or intellectual disabilities".

[57] Ibid.

[58] CCPR/C/74/D/684/1996, CCPR/C/PAK/CO/1, para. 18 (c); A/67/279, para. 58; see also Economic and Social Council resolution 1984/50 (Safeguards guaranteeing protection of the rights of those facing the death penalty); Economic and Social Council resolution 1989/64 (Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty); A/HRC/37/25.

37. A number of States have adopted legislation providing that persons who develop mental illnesses after sentencing are exempt from execution.[89] During the reporting period, the Supreme Court of the United States granted an indigent defendant the right to a court-provided independent mental health expert[90] and declared unconstitutional the practice used in Texas for evaluating intellectual disability.[91]

38. Despite progress in some States, individuals with mental or intellectual disabilities reportedly were under sentence of death in several other countries, including Ghana, the Islamic Republic of Iran, Japan, Maldives, Pakistan, Singapore and the United States.[92] Some States have no legal provisions prohibiting the execution of persons with mental or intellectual disabilities;[93] and few have implemented practices that fully protect this category of persons, notably addressing the situation of persons who develop mental illnesses after sentencing.[94]

C. Foreign nationals, including migrant workers

39. In its resolution 71/187, the General Assembly called upon all States to comply with their obligations under article 36 of the Vienna Convention on Consular Relations, particular the right to receive information on consular assistance. The competent authorities must inform the persons concerned of their right to contact the relevant consular post and, if those persons so request, notify the consular services of those who have been deprived of their liberty, in accordance with the Vienna Convention on Consular Relations. Compliance with these rights is of particular importance in the capital context in facilitating access from an early point in the criminal process to adequate legal representation and the full exercise of due process rights.

40. In his report to the Human Rights Council, the Secretary-General stated that low-income individuals and foreign nationals were often unable to access effective legal representation, as legal aid services were generally limited or inadequate. They therefore might not be able to exercise their right to equal protection before the law (A/HRC/36/26). United Nations special procedures mandate holders highlighted that migrants face multiple obstacles in effectively challenging charges made against them, including unfamiliarity with legal language and procedures, limited awareness of their rights, financial constraints and the possible lack of a supportive social network. They may also face bias by judges, police officers and investigators, which can influence the verdict against them and leave them at increased risk of receiving the death sentence.[95]

---

[89] Submission from Cornell Center on the Death Penalty Worldwide referring to Algeria, Antigua and Barbuda, Cuba, Ethiopia, Guatemala, Japan, Jordan, Syrian Arab Republic, Tajikistan and Thailand.

[90] *McWilliams v. Dunn* (2017).

[91] *Moore v. Texas* (2017).

[92] Submissions from Justice Project Pakistan; The Advocates for Human Rights-Iran Human Rights-Ensemble contre la peine de mort; Death Penalty Information Center, "The death penalty in 2017: year end report", referring to data compiled by the Fair Punishment Project. Available at https://deathpenaltyinfo.org/documents/2017YrEnd.pdf. Amnesty International, "Imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons with mental or intellectual disabilities"; "Amnesty International global report: death sentences and executions 2017".

[93] Submissions from Justice Project Pakistan; Cornell Center on the Death Penalty Worldwide.

[94] Submission from Cornell Center on the Death Penalty Worldwide.

[95] OHCHR, "Death penalty disproportionately affects the poor, United Nations rights experts warn", 6 October 2017. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E; A/70/304, paras. 76–77.

41. In 2017, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families recommended that Indonesia ensure "that consular and diplomatic missions are adequately staffed and that staff are properly trained in a human rights-based approach to dealing with all issues faced by migrant workers", including the death penalty (CMW/C/IDN/CO/1, para. 37). The Human Rights Committee noted with concern "the large number of Pakistani migrant workers who have been sentenced to death and executed overseas and the reportedly insufficient consular and legal services made available to them" (CCPR/C/PAK/CO/1, para. 17). It stated that Pakistan should, as a matter of priority, take all measures necessary to ensure that Pakistani migrant workers sentenced to death overseas are provided "with sufficient legal and consular services throughout their legal proceedings" (ibid., para. 18). The Committee on the Elimination of Racial Discrimination was concerned by the "disproportionally high representation of migrants" (CERD/C/SAU/CO/4-9, para. 17) among those sentenced to death in Saudi Arabia. It recommended that Saudi Arabia conduct "a study on the root causes of the overrepresentation of migrant workers in the criminal justice system with a view to addressing those causes" (ibid., para. 18).

42. In Malawi, further to a decision that declared the mandatory death penalty unconstitutional,[96] the High Court conducted a review of sentences, a number of which were imposed on foreign nationals who had not been afforded access to consular assistance on arrest. In one case, the Court held that a violation of article 36 of the Vienna Convention was so serious a breach of the prisoner's rights that the imposition of a death sentence would be "unsustainable".[97] The Ombudsman of Romania reported that it had "proceeded ex officio" in a case of a Romanian national sentenced to death in Malaysia,[98] while Argentina reported that it was working actively with regard to a national on death row in Texas.[99] Mexico reported that, as at February 2018, 53 Mexicans remained sentenced to death in the United States, of whom 32 had been the subject of the *Avena* case.[100] In November 2017, one of the 32 individuals who had been part of the *Avena* case was executed. United Nations special procedures mandate holders had called on the United States to halt his execution amid concerns, notably that at the time of his arrest he was not informed of his right to seek consular assistance.[101] Mexico reported that its legal assistance programme, the Mexican Capital Legal Assistance Programme, continued to ensure legal representation in pretrial court proceedings, appeals and post-sentencing in death penalty cases involving Mexican nationals abroad.[102]

43. The Special Rapporteur on extrajudicial, summary or arbitrary executions had concluded that since "the provision of consular assistance can materially diminish the likelihood of the imposition of a death sentence, a State that does not take all reasonable steps to provide adequate consular assistance could arguably be said to have failed in its duty of due diligence to protect its nationals from arbitrary deprivations of life" (A/70/304, para. 119).

[96] *Kafantayeni and others v. Attorney General of Malawi* (2007).

[97] *Republic v. Lameck Bandawe Phiri*, sentence re-hearing, Case No. 25 of 2017 (joint submission from Reprieve and Cornell Center on the Death Penalty Worldwide).

[98] Submission from the Ombudsman of Romania.

[99] Submission from Argentina.

[100] *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004*, p. 12.

[101] OHCHR, "United Nations experts urge United States to halt Texas execution of Mexican Ruben Cardenas Ramirez", 6 November 2017. Available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22360&LangID=E?NewsID=22360&LangID=E.

[102] Submission from Mexico.

VII. Disproportionate and discriminatory application of the death penalty to women

44. The Committee on the Elimination of Discrimination against Women adopted general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, in July 2017, in which it recalled the General Assembly resolutions supporting a moratorium on the use of the death penalty and recommended that States parties repeal any criminal provisions that affect women disproportionally, including those resulting in the discriminatory application of the death penalty to women.

45. The Special Rapporteur on extrajudicial, summary or arbitrary executions recalled that the imposition of the death penalty amounts to an arbitrary killing in cases where the courts have ignored essential facts of a capital defendant's case and that the death penalty must not be imposed in a discriminatory manner, or when the personal circumstances of the case, such as a long history of domestic violence, have not been fully taken into account during the proceedings, including at the time of sentencing (A/HRC/35/23). Women facing capital prosecution arising out of domestic violence suffer from gender-based oppression on multiple levels. For instance, it is exceedingly rare for domestic violence and sexual violence to be treated as a mitigating factor during capital sentencing proceedings. Even in those countries with discretionary capital sentencing, courts often ignore or discount the significance of gender-based violence. The Special Rapporteur has argued that the imposition of the death penalty against clear evidence of self-defence constitutes an arbitrary killing (ibid., para. 44). This is particularly important for women charged with murder in contexts of domestic and sexual violence.

46. The Special Rapporteur highlighted that women migrant workers are particularly at risk. Migrant women facing the death penalty abroad are disproportionately affected by the death penalty because of unfamiliarity with the laws and procedures, inadequate or low-quality legal representation, insufficient knowledge of the language and lack of a support network. The Special Rapporteur has further noted that under these circumstances, the application of the death penalty against migrant women amounts to arbitrary killing (ibid., para. 43). In 2017, United Nations special procedures mandate holders urged the United Arab Emirates to prevent the execution of a woman. They noted that discriminatory treatment by criminal courts, in particular of migrant women who are not provided with interpretation services and quality legal aid seems to have led to disproportionately severe sentences in the United Arab Emirates.[103]

47. The Indonesian National Commission on Violence against Women conducted a review of women facing the death penalty, which revealed that the majority of women on death row are victims of gender-based violence and that female domestic workers are targeted by international drug smuggling and human trafficking syndicates, unknowingly made into drug mules by perpetrators who exploit the women's layered vulnerabilities.[104] Ongoing research indicates that the women most likely to be sentenced to death belong to one or more vulnerable or marginalized groups; and the

[103] OHCHR, "United Nations experts urge United Arab Emirates to quash the death sentence against a woman migrant domestic worker", 30 March 2017. Available at http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21462&LangID=E.

[104] Indonesian National Commission on Violence against Women, "Violence against women and right to life" (Jakarta, 2017). Available at http://en.komnasperempuan.go.id/read-news-komnas-perempuan-submission-on-right-to-life.

offences for which women most frequently receive death sentences are non-violent drug offences and murder, often in the context of gender-based violence.[105]

VIII. Disproportionate impact of the use of the death penalty on poor or economically vulnerable individuals and discriminatory use of the death penalty against minorities

48. In States that still maintain the death penalty, its application must be in a manner consistent with all other provisions of the International Covenant on Civil and Political Rights, in particular the right to a fair trial, as provided in article 14, and the non-discrimination requirements of articles 2 (1) and 26. Under article 26 of the Covenant, all persons are equal before the law and are entitled to equal protection without any discrimination. The Human Rights Council called upon States to undertake further studies to identify the underlying factors that contribute to the substantial racial and ethnic bias in the application of the death penalty, where they exist, with a view to developing effective strategies aimed at eliminating such discriminatory practices (Human Rights Council resolution 36/17).

49. In his report to the Human Rights Council, the Secretary-General highlighted that low-income individuals were often unable to access effective legal representation, as legal aid services were generally limited or inadequate. That means that they may not be able to exercise their right to equal protection before the law. Therefore, they may be less likely to mount an effective defence in capital cases and so are disproportionately subjected to the death penalty (A/HRC/36/26 and A/70/304, paras. 85–87). On the occasion of the World Day against the Death Penalty, United Nations special procedures mandate holders highlighted that the death penalty disproportionally affects the poor, while poverty also compounds obstacles that vulnerable and disadvantaged groups in society are already facing. In many countries, this especially includes people of African descent, as well as others who are discriminated against on the basis of their gender, ethnicity, race or migration status. The experts also noted that poverty continues to affect prisoners — and their families — even after they reach death row.[106]

50. The Special Rapporteur on extreme poverty and human rights, after his country visit to Ghana, highlighted that "lack of effective legal representation is especially problematic in death penalty cases" and that "the prisoners affected are overwhelmingly poor".[107]

51. United Nations human rights mechanisms also addressed the use of the death penalty on persons exercising their rights to freedom of religion and expression. Special procedures mandate holders urged the de facto authorities in Sana'a to annul a death sentence handed down against a follower of the Baha'i faith. They expressed their concern that he had been sentenced to death purely on the grounds of his religion.[108]

[105] Submission from Cornell Center on the Death Penalty Worldwide.

[106] OHCHR, "Death penalty disproportionately affects the poor, United Nations rights experts warn", 6 October 2017. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E.

[107] United Nations Special Rapporteur on extreme poverty and human rights, statement on visit to Ghana, 18 April 2018. Available at https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22951&LangID=E.

[108] OHCHR, "Death sentence of Baha'i follower in Yemen must be quashed: United Nations rights experts", 25 January 2018. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22611&LangID=E.

IX. International and regional initiatives relating to the implementation of General Assembly resolution 71/187

A. Human Rights Council

52. The Human Rights Council held a biennial high-level panel discussion on the question of the death penalty on 1 March 2017, including to "continue the exchange of views on the question of the death penalty and to address violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment". The panellists "recommended that the Human Rights Council request a comprehensive legal study on the emergence of a customary norm prohibiting the use of the death penalty under all circumstances".[109]

53. Furthermore, United Nations special procedures mandate holders monitored the application of international human rights standards for the protection of rights of those facing the death penalty. During the universal periodic review, States formulated recommendations related to the death penalty, for example, in relation to Ghana, Indonesia, the United Arab Emirates, Zambia and Zimbabwe.[110]

B. Office of the High Commissioner for Human Rights

54. The priorities of OHCHR for the period 2018–2021 include a commitment to undertake strategic advocacy and strengthen partnerships to promote the abolition of the death penalty and, pending its abolition, promote moratoriums and increased adherence to international human rights law.[111] During the reporting period, OHCHR convened an expert consultation on discrimination and the death penalty (A/HRC/36/26); and a regional event on the death penalty and drug-related offences in South-East Asia (Bangkok, February 2018). OHCHR organized and participated in meetings and side events in Geneva and New York,[112] as well as at the Commission on Narcotic Drugs and the tenth International Congress of Justice Ministers (organized by the Ministry of Foreign Affairs and International Cooperation of Italy, the Government of Switzerland and the Community of Sant'Egidio).

55. OHCHR also continued to monitor the application of the death penalty and provided support to advancing its abolition, including with regard to the following States: Barbados, Belarus, Iran (Islamic Republic of), Iraq, Malaysia, Maldives, Mauritania, Pakistan, Philippines, Saudi Arabia, United States of America and State of Palestine (A/HRC/37/3).

C. Regional initiatives

56. The African Commission on Human and Peoples' Rights adopted a resolution in which it urged those States parties that have established a moratorium on executions to undertake further practical steps towards the abolition of the death

[109] A/HRC/36/27. OHCHR, "Human Rights Council holds biennial high-level panel discussion on the death penalty", 1 March 2017. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21261&LangID=E.

[110] A/HRC/36/7, A/HRC/34/8, A/HRC/37/7, A/HRC/37/14, A/HRC/38/14.

[111] OHCHR, "United Nations human rights management plan 2018–2021" (Geneva, 2018). Available at http://www2.ohchr.org/english/ohchrreport2018_2021/OHCHRManagementPlan2018-2021.pdf.

[112] See, for example, United Nations, "'The death penalty has no place in the 21st century': United Nations chief Guterres", 10 October 2017. Available at https://news.un.org/en/story/2017/10/568172-death-penalty-has-no-place-21st-century-un-chief-guterres#.

penalty, in accordance with their regional and international legal obligations, by reinforcing their moratoriums and by encouraging judicial authorities to refrain from imposing the death penalty. It also urged those States parties that have not already abolished the death penalty to immediately establish a moratorium on executions and to adopt measures aimed at the full abolition of the death penalty.[113]

57. Ensemble contre la peine de mort, in partnership with the National Human Rights Commission of Côte d'Ivoire, the International Federation of Action by Christians for the Abolition of Torture and the World Coalition against the Death Penalty organized the first African Regional Congress against the Death Penalty.[114]

58. The Council of Europe and the European Union issued a joint statement reaffirming their strong and unequivocal opposition to capital punishment in all circumstances and for all cases.[115] The Alliance for Torture-Free Trade was launched as an initiative of Argentina, Mongolia and the European Union.[116] It aims to end the trade in goods used for capital punishment and to make it significantly more difficult to obtain products intended for carrying out the death penalty.[117] The Organization for Security and Cooperation in Europe published a background paper on the status of the death penalty in its participating States.[118] The Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations conducted a study on the right to life and conditions of detention on death row, due to be finalized in 2018.

X. Conclusions and recommendations

59. **I welcome the considerable progress made towards the universal abolition of the death penalty since the adoption of General Assembly resolution 71/187 and commend the efforts of the Member States that took measures towards abolition. The overall number of executions worldwide has decreased. I welcome the initiatives of States that have reduced the number of offences punishable by death, as well as the removal of the mandatory death penalty in a number of States. I particularly commend States that have ratified or acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

60. **Serious challenges still remain. Some States have resumed executions or continue to use the death penalty for offences that do not meet the threshold of the "most serious crimes". Even in States that have imposed a moratorium on executions, death sentences continue to be handed down. I remain convinced that there is no evidence that the death penalty deters crime more than other forms of punishment. Curbing crime requires a strong focus on strengthening the justice system, so that it complies with international human rights law and is**

[113] African Commission on Human and Peoples' Rights resolution on the right to life in Africa, No. 375 (LX) 2017.

[114] Together against the Death Penalty/Ensemble contre la peine de mort, "Final declaration of the African Congress", 10 April 2018. Available at http://www.ecpm.org/en/final-declaration-of-the-african-congress/.

[115] See joint declaration by the European Union High Representative for Foreign Affairs and Security Policy and the Secretary General of the Council of Europe on the European and World Day against the Death Penalty, 10 October 2017. Available at https://rm.coe.int/joint-declaration-eu-coe-world-day-against-the-death-penalty/168075ab18.

[116] OHCHR, "Death penalty and transparency: what's to hide?", 26 October 2017. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DeathPenaltyandTransparency.aspx.

[117] Submission from Argentina, Global Alliance to end trade in goods used for capital punishment and torture, political declaration, 18 September 2017. Available at http://torturefreetrade.org/documents/170918_Political-Declaration-Torture-Free.pdf.

[118] OSCE Office for Democratic Institutions and Human Rights, *The Death Penalty in the OSCE Area*

more effective and humane. I therefore urge States that have abolished the death penalty not to reintroduce it.

61. States with moratoriums should maintain and strengthen their policies against the death penalty. Moratoriums are useful transition tools towards abolition. Moving to an official moratorium requires leadership and political courage, and entails more than the cessation of executions. Pending abolition, national prosecutors may consider refraining from seeking the death penalty, and judges may consider not imposing it. States should consider using the constitutional and/or legal authority to commute or pardon death sentences. Formal abolition should ideally be reflected in an explicit outlawing of the death penalty. I encourage States to ratify or accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

62. The support of abolitionist States is crucial, and I call upon them, especially those that have abolished the death penalty recently, to support all States in moving away from the death penalty, by sharing good practices and experiences. Retentionist States should systematically and publicly provide full and accurate data on death sentences, including information on the characteristics of convicted and executed persons and the crimes with which they are charged. Disaggregated data, including on gender, age, nationality and other relevant characteristics of the persons affected, are necessary to ensure compliance with international human rights standards. The use of the death penalty without the requisite transparency casts doubt on the compliance with international human rights standards.

63. Pending abolition, States must adhere to the strict limits and guarantees provided for in international human rights law. In particular, as stipulated in article 6 (2) of the International Covenant on Civil and Political Rights on the right to life, the imposition of the death penalty is limited to the "most serious crimes", that is, intentional killing. Accordingly, the death penalty must not be imposed for drug offences, consensual same-sex activities, adultery, sodomy, blasphemy or so-called "religious crimes". Even in the case of the most serious crimes, the death penalty should not be mandatory. States must also adhere to fair trial guarantees.

64. Pending abolition, States that retain the death penalty must ensure that it is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law. In particular, I urge States to repeal any criminal provisions that result in the discriminatory and disproportionate application of the death penalty to women.

65. States that still retain the death penalty must ensure that it is never imposed on juvenile offenders. Persons who have been sentenced to death for crimes committed when they were under the age of 18 years should be resentenced to a lesser sentence. I call on States to ensure that laws and sentencing guidelines are developed or amended to prohibit the unlawful sentencing and execution of persons with mental or intellectual disabilities.

66. International standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, make it clear that people must receive a fair trial, including the right to adequate legal assistance, at all stages. States must ensure that foreign nationals are informed of their right to receive information on consular assistance and, if those persons so request, notify consular services, in accordance with the *Vienna Convention* on Consular Relations.